IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2050 OF 2006

Dixit Chemical & Engineering)
Company Private Limited,)
Incorporated under the provisions)
of the Companies Act, through its)
Director Mukund Parshuram Dixit,)
Age 75 years, Occ. Business,)
Residing at 1152/2A Shivajinagar,)
Lakaki Road, Pune 411 016.) ...Petitioner

Vs.

The State of Maharashtra)
Through Pimpri Police Station,)
Pune.) ...Respondent

Shri Uday Warunjikar for the Petitioner.

Shri S.R.Shinde, A.P.P for the Respondent.

CORAM : ABHAY S. OKA, J.

DATE ON WHICH SUBMISSIONS ARE HEARD : OCTOBER 17, 2006.

DATE OF PRONOUNCEMENT OF JUDGMENT : NOVEMBER 08, 2006.

JUDGMENT:

1. Rule. The learned A.P.P waives service. Considering the facts and circumstances of the case, taken up for hearing forthwith. By this Petition the Petitioner has invoked jurisdiction of this Court under Article 226 and 227 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1973. One Shri Subha Purushottam Yadav was

working as a watchman with the Petitioner-Company. The said Subha Yadav was found dead in the premises of the Petitioner-Company. The F.I.R was lodged by one Shri Pollavan Yadav. During the investigation it was found that sheets of stainless steel were stolen from the factory of the Petitioner. The said sheets (total 40 in number) were discovered at the instance of one of the accused persons under a panchnama dated 21st August, 1991. Accordingly, prosecution was lodged against six accused persons out of which accused No.3 Bacchalal Dashrath Yadav was absconding. The trial of the other accused persons was separated. By Judgment and Order dated 30th November, 1994, the learned Additional Sessions Judge, Pune convicted one of the accused persons for offence punishable under section 302 of the Indian Penal Code. The learned Judge also convicted two other accused persons for offences punishable under section 411 of the Indian Penal Code. The learned Judge directed the Pimpri Police Station to submit a fresh charge-sheet against the absconding accused Bacchalal Yadav. He also directed that till the disposal of the case against the said absconding accused, the muddemal property shall be retained. It appears that no steps were taken by the police to trace out the absconding accused and to file

charge-sheet against him. Therefore, an Application was made by the Petitioner on 27th July, 2006 to the police authority for return of the stainless steel sheets which formed a part of muddemal of the case. As the said property was not returned, the Petitioner has approached this court for seeking necessary directions for return of the property.

2. On 26th September, 2006 when this Writ Petition was heard, the learned A.P.P was directed to ascertain from Pimpri Police Station, Pune whether charge-sheet has been submitted against the absconding accused in terms of order dated 30th November, 1994. On 17th October, 2006 the learned A.P.P stated on instructions that charge-sheet has been submitted on 12th October, 2006 against the said accused.

3. The learned counsel for the Petitioner submitted that for a period of last more than 12 years the property of the Petitioner is lying in the court. He submitted that there is a gross delay on the part of the police in submitting charge-sheet against the absconding accused. He submitted that the property may be handed over to the Petitioner and as and when it is required in the trial against the accused

Bacchalal Yadav, the Petitioner will produce the property. He submitted that he has not applied to the Sessions Court as a direction is already issued by the said Court for retaining the property till the disposal of the case. The learned A.P.P opposed the prayer by pointing out that the property will have to be retained till the case against accused Bacchalal is decided.

4. I have considered the submissions. The discovery panchnama at Exhibit 42 in the decided Sessions Case records discovery of 40 stainless steel sheets admeasuring 8 feet 2 1/2 inch in length and 4 ft in width. On the 37 sheets out of 40, English alphabets "D.C.E." have been inscribed on one corner. On remaining three sheets, the said alphabets have been inscribed on more than one corner. The Sessions Case against available accused was decided on 30th November, 1994. The learned Additional Sessions Judge directed the police to file charge-sheet against the absconding accused Bacchalal and also directed that till the disposal of the case against the said Bacchalal, the muddemal property shall be retained. The police have filed charge-sheet against the said Bacchalal as late as on 12th October, 2006. It is

obvious that charge-sheet has been filed not only after filing of the Writ Petition but only after this court by order dated 26th September, 2006 directed the learned A.P.P to take instructions regarding filing of the charge-sheet. Thus, the charge-sheet is obviously filed only because of present Writ Petition was filed by the Petitioner making a grievance about the inaction of the Police.

5. No purpose will be served by depriving the Petitioner of the custody of the stainless steel sheets which are part of the muddemal property which are described in panchnama at Exhibit 42. However, the Petitioner will be entitled to custody of the said stainless steel sheets subject to filing usual bond before the concerned court containing an undertaking of the Petitioner to preserve the property till the disposal of the case against said Bacchalal and to produce the same before the court as and when directed by the concerned court. Before handing over custody of the property, the said stainless steel sheets will have to be photographed at the cost of the Petitioner.

6. Hence, I pass the following order:

(i) The custody of the articles described in panchnama at Exhibit 42 in Sessions Case No.233 of 1993 shall be handed over to the Petitioner subject to the Petitioner filing usual bond before the concerned court recording therein an undertaking to preserve the property till the disposal of the case against the said Bacchalal and to produce the property before the appropriate court as and when directed by the appropriate court.

(ii) Before handing over custody of the said stainless steel sheets, the same shall be photographed at the cost of the Petitioner and copies of the photographs duly signed by the authorised signatory of the Petitioner-Company and the concerned Investigating Officer shall be kept in the custody of the concerned court.

(iii) Rule is partly made absolute in above terms.

JUDGE